MT LEGISLATIVE HISTORY

Chapter 550 1977

Bill H _____ S 166 Original bill & hist. ✓C

H. Committee on Rules

S. Committee on Labor & Employment Relations

Hearing Date(s)	Apr 12	✓C	Hearing Date(s)	Jan 26	✓C out
	_____	___C	Sen. Finance Claims	2-21	✓C
	_____	___C		3-8	✓C
	_____	___C		3-9	✓C
			Out	4-1	✓
Date Out	Apr 12	✓C		~~Jan 26~~	~~✓~~C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Senate BILL NO. 166

INTRODUCED BY LABOR & EMPLOYMENT RELATIONS COMMITTEE
BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION
Lee Chairman

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947; CREATING AN UNINSURED EMPLOYERS' FUND TO GRANT TO ALL EMPLOYEES IN THIS STATE WORKERS' COMPENSATION BENEFITS EVEN IF THEIR EMPLOYERS ARE NOT PROPERLY INSURED; PROVIDING FOR FUNDING OF THE FUND; DEFINING INSURER; AND REPEALING SECTIONS 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, AND 92-1102, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 92-202.1, R.C.M. 1947, is amended to read as follows:

"92-202.1. Employments covered and employments exempted from coverage. ~~This act shall not apply to any of the following employments unless the employer elects coverage under this act:~~ (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 92-410.1 and to all employees as defined in 92-411. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under the act and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

~~(1)~~(a) Household employment.

~~(2)~~(b) Casual employment as defined in 92-436.

~~(3)~~(c) Employment of members of an employer's family dwelling in ~~his~~ the employer's household.

~~(4)~~(d) Employment of sole proprietors or working members of a partnership.

~~(5)~~(e) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.

~~(6)~~(f) Any person performing services in return for aid or sustenance only."

Section 2. Section 92-204.1, R.C.M. 1947, is amended to read as follows:

"92-204.1. Election of employer and employee to come under act -- action against third party causing injury -- ~~right to subrogation. Where both the employer and employee have elected to come~~ For all employments covered under ~~this~~

the ~~act Workers' Compensation Act~~, or for which an election has been made for coverage under the act, the provisions of ~~this~~ the act ~~shall be~~ are exclusive, ~~and such election shall be held to be a surrender by such employer and the servants and employees of such employer and such employee, as among themselves, of their right to any other method, form or kind of compensation, or determination thereof, or to any other compensation, or kind of determination thereof, or cause of action at law, suit in equity, or statutory or common law right or remedy, or proceeding whatever, for or on account of any personal injury to or death of such employee, except as such rights may be hereinafter specifically granted; and such election shall bind~~ Except as provided in 92-212 for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death or personal injury to any employees covered by the Workers' Compensation Act. The Workers' Compensation Act binds the employee himself, and in case of death ~~shall bind~~ binds his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or insolvency. The right to compensation and medical benefits as provided by this act

~~shall~~ is not be affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event ~~shall occur~~ occurs to an employee while performing the duties of his employment and such event ~~shall be~~ is caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, ~~then~~ ~~such~~ the employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. ~~Further provided, that whenever such~~ However, if an employee ~~shall receive~~ receives an injury while performing the duties of his employment and ~~such~~ the injury or injuries, so received by ~~such~~ the employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then ~~such~~ the employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the ~~Workmen's~~ Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against ~~such~~ the servants or employees of his employer, causing ~~such~~ the injury. ~~Provided, that the employer or insurer shall be~~

entitled to full subrogation for all compensation and benefits paid or to be paid under this act, except as otherwise provided in this section. The employer's or insurer's right of subrogation shall be a first lien on such claim, judgment or recovery. The employee shall institute such third-party action after giving the employer or insurer reasonable notice of his intention to institute such third party action. The employee may request that such insurer pay a proportionate share of the reasonable costs, including attorneys' fees, of such third-party action. The insurer may elect not to participate in the cost of the third-party action, but as such election is made the insurer shall be deemed to have waived fifty percent (50%) of its subrogation rights granted by the section. Provided, however, that if an employee refuses or fails to institute such action within one (1) year from the date of injury, the employer or insurer may institute such third-party action in his name and for his benefit or that of his personal representative. If the employee or his personal representative institutes such third-party action, he shall be entitled to at least one-third (1/3) of the amount recovered by judgment or compromise settlement less his proportionate share of the reasonable costs, including attorneys' fees, in the event the amount of recovery is insufficient to provide him with that amount after payment of subrogation, in the event the

employer or insurer institutes such third-party action, he shall pay to the employee any amount recovered by judgment or settlement which is in excess of the amounts paid or to be paid under this act an employer's or insurer's reasonable costs and attorneys' fees. Nothing contained in this section shall prevent the employer or insurer, including the division of workmen's compensation, from entering into compromise agreements in settlement of subrogation rights. If death results from the injury or occupational disease, the employer shall have a right of action against the third party for recovery of any amount paid under this act, and such right of action shall be in addition to any cause of action by the heirs or personal representative of the deceased. In the event that the amount of compensation and benefits payable under this act shall not have been fully determined at the time such employee or his heirs or personal representative, or the employer or insurer, shall receive settlement of his action, prosecuted as aforesaid, then the division shall determine what proportion of such settlement shall be allocated under subrogation and such determination may be appealed as any other determination of the division."

Section 3. There is a new R.C.M. section numbered 92-204.2 that reads as follows:

92-204.2. Subrogation. (1) If an action is prosecuted

as provided for in 92-204.1 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2)(a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to institute the third party action within 1 year from the date

of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge.

Section 4. There is a new R.C.M. section numbered 92-212 that reads as follows:

92-212. Uninsured employers fund. (1) There is created an uninsured employers fund. The purpose of the fund is to pay to an injured employee of an uninsured employer the same

benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3. For the purposes of this section, the words "uninsured employer" mean an employer who has not properly complied with the provisions of 92.202.1. The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) The fund shall be funded in the following manner:

(a) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $500, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment prior to July 1, 1977, may not be made.

(b) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid to an injured employee of the uninsured employer.

(c) In no event may an uninsured employer's combined liability under subsections (2)(a) and (2)(b) of this section exceed $30,000.

(d) The division may, at the beginning of each fiscal year, determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 92-709.1(13)(a) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

(e) The fund shall also be funded from the state general fund for payment of benefits as provided for in this section. However, any amounts collected under subsections (2)(a), (2)(b), or (2)(d) of this section shall be expended before any general fund appropriations are expended.

(3) If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (2)(a) and (2)(b) above, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under this section.

(4) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.

(5) All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

(6) When the division discovers an uninsured employer it shall order him to cease operations until he has elected

to be bound by a compensation plan. An employer who does not comply with the division's order to cease operations is guilty of a misdemeanor.

Section 5. There is a new R.C.M. section that reads as follows:

Effective date of uninsured employers' fund. Except as provided in this section, 92-212 is effective on July 1, 1977. Payouts for benefits may not be made from the uninsured employers' fund until the fund attains a level of $150,000 or January 1, 1979, whichever occurs first. However, until payouts for benefits from the uninsured employers' fund begin, an uninsured employer, as defined in 92-212(1), is subject to suit by an employee who suffers an injury arising out of and in the course of employment. In any such action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense that the:

(1) employee was negligent unless such negligence was wilful;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonable safe tools or

appliances.

Section 6. Section 92-435, R.C.M. 1947, is amended to read as follows:

"92-435. Insurer defined. "Insurer" means ~~any insurance company authorized to transact business in this state insuring any employer under this act and includes industrial insurance account created by this act, known as the "state fund"~~ an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in 92-212."

Section 7. Section 92-614, R.C.M. 1947, is amended to read as follows:

"92-614. Who liable for injuries under the ~~different plans of~~ act and in what amounts, == extraterritorial application and reciprocity. (1) Every ~~employer who shall become bound by and subject to the provisions of compensation plan number one (1), and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two (2), and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be~~ insurer is liable for the payment of compensation in the manner and to the extent

hereinafter provided to an employee of an employer it insures who ~~has elected to come under this act and who shall receive~~ receives an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any.

(2) If a worker employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising out of and in the course of such employment, the provisions of this act shall apply to such worker as though he were injured within this state.

(3) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them:

(a) if the employer and employee are bound by the provisions of the Workers' Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(4) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other

state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workers' Compensation Law of the certifying state.

(5) The division may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workers' compensation laws of the agreeing states."

Section 8. Repealer. Sections 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, and 92-1102, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA

REQUEST NO. 135-77

FISCAL NOTE

Form BD-15

In compliance with a written request received January 21, 1977, there is hereby submitted a Fiscal Note for Senate Bill 166 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act creating an uninsured employers' fund to grant to all employees in this state Workers' Compensation benefits even if their employers are not properly insured; providing for funding of the fund; and defining insurer.

ASSUMPTIONS:

1. Benefit payments will become effective July 1, 1977.
2. The state's General Fund will provide the initial $150,000.

FISCAL IMPACT:

	FY 78	FY 79	TOTAL
General Fund appropriation required	$150,000	$ 0	$150,000

Richard L. Brown for

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-26-77

Status of Bills in Committee

Forty-fifth LEGISLATIVE SESSION

COMMITTEE ON Labor & Employment Relations

SENATE BILL NO.	ENTERED COMM.	DATE TO BE CONSIDERED 1977	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
SB80	1/11/77	2/4/77	2/18/77			2/18/77 without Recommend.			
SB 86	1/12/77	2/7/77	2/11/77		2/11/77				
SB 96	1/13/77	1/28/77	2/11/77		2/11/77				
SB 136	1/19/77	1/31/77	2/11/77		2/11/77				
SB 140	1/19/77	1/26/77	1/26/77	1/26/77					
SB 141	1/19/77	1/26/77	1/26/77	1/26/77					
SB 163	1/20/77	1/31/77	2/11/77	2/11/77 W.O.R.					
SB 166	1/20/77	1/26/77	1/26/77			1/26/77			
SB 186	1/21/77	2/2/77	2/2/77	2/2/77					
SB 187	1/21/77	2/2/77	2/18/77			2/18/77 with A Rec			
SB 234	1/24/77	2/16/77	2/16/77			2/16/77			
SB 263	1/25/77	2/18/77	2/18/77			2/18/77 without Rec.			
SB 264	1/25/77	2/7/77	2/11/77		2/11/77				
SB 272	1/25/77	2/7/77	2/7/77			2/7/77			
SB 330	1/28/77	2/11/77	2/11/77		2/11/77				
SB 279	1/26/77	2/9/77	tabled						

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

January 26, 1977

The seventh meeting of the Labor and Employment Relations Committee was called to order by Chairman Lee on the above date in Room 402 of the State Capitol Building at 9:30 a.m.

ROW CALL: All members present.

CONSIDERATION OF SB 140: There being no questions or discussion on SB 140, to delete certain boiler inspection fee requirements, Senator Lowe moved that SB 140 DO PASS. The motion carried unanimously.

CONSIDERATION OF SB 141: There being no questions or discussion on SB 141, repealing sections relationg to inspections of steam traction engines, Senator Blaylock moved that SB 141 DO PASS. The motion carried unanimously.

CONSIDERATION OF SB 166: John Bobinski passed out a sheet of amendments that he and Norman Grosfield worked out for SB 166, creating an uninsured employers' fund to grant all employees workers' compensation benefits. Mr. Grosfield explained these amendments (a copy is attached) and stated that they were drafted in pursuit to the last meeting. The members of the committee requested that an amendment for State liability be added to SB 166.

Mr. Grosfield explained the fourth amendment first because all of the other amendments followed from this one. This amendment states that the employee who suffers an injury while working for an uninsured employer may choose to either receive benefits from the uninsured employers fund or pursue a damage action against the employer.

Discussion was then held. Senator Goodover asked if you did choose to sue the employer could you then come back and receive benefits from the uninsured employer's fund. John Bobinski stated that once an election has been made to either take from the fund or pursue a damage action, the election is final.

Robert L. Helding, of Montana Word Products Association, asked if the employee still has the right to waive his right to be covered under the Worker's Compensation Act. Bobinski stated that every employee whose employer is bound by the provisions of this act shall also become subject to the provisions of the act. Grosfield added that no employer can be refused coverage unless he has back due premiums.

Mr. Grosfield then explained that if the uninsured employers fund does run low, the division may make appropriate proportionate reductions in benefits to all claimants. There was much discussion

on this subject. Senator Lowe and Senator Goodover were confused on how an employee could collect more money from the fund than was paid into it. Grosfield explained that this was not what he was saying. Benefits from the fund shall be paid in accordance with the sums in the fund. A certain percent of benefits to the employee are better than no benefits at all.

Senator Goodover then stated that he didn't think that they should try for the general fund appropriation. He said that the uninsured employer's fund already has three sources of funding and there should be money in the fund now.

George Wood, of the Montana Self-Insurers Association, said there has been some confusion. He said there is no money in the fund because there have been no deaths. The committee felt that they wanted to start payout from this fund as soon as possible and that is the reason for the general fund appropriation.

Senator Blaylock then moved that SB 166 DO PASS AS AMENDED. All members of the committee voted "aye" except Senator Lowe and Senator Goodover voted "nay".

ADJOURN:

There being no further business, the meeting was adjourned at 10:30 a.m.

Robert E. Lee, Chairman

ROLL CALL

LABOR & EMPLOYMENT RELATIONS COMMITTEE

45th LEGISLATIVE SESSION - - 1977 Date 1/26

NAME	PRESENT	ABSENT	EXCUSED
Senator Robert Lee, Chairman	✓		
Senator Bill Lowe, Vice Chairman	✓		
Senator Chet Blaylock	✓		
Senator Pat Goodcver	✓		
Senator Matt Himsl	✓		
Senator Sandy Mehrens	✓		
Senator Harold Nelson	✓		
Senator Richard Smith	✓		

AMENDMENTS TO SENATE BILL 166

1. Amend page 2, Section 1, line 9.
Following: "Household"
Insert: "and domestic"

2. Amend page 3, Section 2, line 14.
Following: "92-212"
Insert: ", 92-213, and 92-214"

3. Amend page 9, Section 4, line 21.
Following: "be paid"
Insert: "from the fund"

4. Amend page 11, Section 5, line 4.
Following: line 4
Insert: "Section 5. There is a new R.C.M. section numbered 92-213 that reads as follows:

92-213. Election of uninsured employee to take under the fund or bring action against employer -- limitation on benefit entitlement under the fund. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 92-212(1), or an employee's beneficiaries in injuries resulting in death, may elect to either receive benefits from the uninsured employers fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(a) employee was negligent unless such negligence was willful;

(b) injury was caused by the negligence of a fellow employee; or

(c) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

(2) Notwithstanding the provisions of 92-212 and 92-614, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."
Renumber: all subsequent sections.

5. Amend page 11, Section 5, line 4.
Following: "section"
Insert: "numbered 92-214"

6. Amend page 11, Section 5, line 19.
Strike: "wilful"
Insert: "willful"

SENATE LABOR COMMITTEE

BILL 140, 141, 166 VISITORS' REGISTER DATE 1/26

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
George Wood	Mt. Self Insurers Assn	166 140-141	✓	
Ronald Wakefield	Div of Workers Comp	166 140 141	✓	
James J. Murphy	✓ ✓	140 141 144	✓	
Ed Book	Mt State AFL-CIO	140, 141 166 -	✓	
Bob Keating	Mont. Wood Products Assn	166 141	✓	
Ron Tansey	Pepsi-Cola G.F.	—		
Glenn Tansey	" " "			

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

SENATE BILL NO. 166

INTRODUCED BY LABOR AND EMPLOYMENT RELATIONS COMMITTEE

LEE, CHAIRMAN

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947; CREATING AN UNINSURED EMPLOYERS' FUND TO GRANT TO ALL EMPLOYEES IN THIS STATE WORKERS' COMPENSATION BENEFITS EVEN IF THEIR EMPLOYERS ARE NOT PROPERLY INSURED; PROVIDING FOR FUNDING OF THE FUND; DEFINING INSURER; AND REPEALING SECTIONS 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, AND 92-1102, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 92-202.1, R.C.M. 1947, is amended to read as follows:

"92-202.1. Employments covered and employments exempted from coverage. ~~This act shall not apply to any of the following employments unless the employer elects coverage under this act:~~ (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 92-410.1 and to all employees as defined in 92-411. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under the act and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

~~(1)~~(a) Household AND DOMESTIC employment.

~~(2)~~(b) Casual employment as defined in 92-436.

~~(3)~~(c) Employment of members of an employer's family dwelling in ~~his~~ the employer's household.

~~(4)~~(d) Employment of sole proprietors or working members of a partnership.

~~(5)~~(e) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.

~~(6)~~(f) Any person performing services in return for aid or sustenance only."

Section 2. Section 92-204.1, R.C.M. 1947, is amended to read as follows:

"92-204.1. Election of employer and employee to come under act -- action against third party causing injury -- ~~right to subrogation. Where both the employer and employee~~

~~have--elected-to-come~~ For all employments covered under ~~this~~ the ~~act~~ Workers' Compensation Act, or for which an election has been made for coverage under the act, the provisions of ~~this~~ the act ~~shall be~~ are exclusive, ~~and--such--election shall--be--held--to--be-a-surrender-by-such-employer-and-the servants,-and-employees-of-such-employer-and-such--employees--among--themselves,--of--their-right-to-any-other-method, form-or-kind-of-compensation,-or-determination--thereof,--or to-any-other-compensation,-or-kind-of-determination-thereof, or--cause--of-action-at-law,-suit-in-equity,-or-statutory-or common-law-right-or-remedy,-or-proceeding-whatever,--for--or on--account--of--any--personal--injury--to--or-death-of-such employee,--except--as--such--rights---may---be---hereinafter specifically-granted;-and-such-election-shall-bind~~ Except as provided in 92-212, 92-213, AND 92-214 for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death or personal injury to any employees covered by the Workers' Compensation Act. The Workers' Compensation Act binds the employee himself, and in case of death ~~shall bind~~ binds his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or

insolvency. The right to compensation and medical benefits as provided by this act ~~shall~~ is not be affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event ~~shall~~ occur occurs to an employee while performing the duties of his employment and such event ~~shall~~ be is caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, ~~then such~~ the employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. ~~Further provided,--that--whenever--such~~ However, if an employee ~~shall receive~~ receives an injury while performing the duties of his employment and ~~such~~ the injury or injuries, so received by ~~such~~ the employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then ~~such~~ the employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the ~~workmen's~~ Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against ~~such~~ the servants or employees of his employer, causing ~~such~~ the

injury. ~~Provided, that the employer or insurer shall be entitled to full subrogation for all compensation and benefits paid or to be paid under this act, except as otherwise provided in this section. The employer's or insurer's right of subrogation shall be a first lien on such claim, judgment or recovery. The employee shall institute such third party action after giving the employer or insurer reasonable notice of his intention to institute such third party action. The employee may request that such insurer pay a proportionate share of the reasonable costs, including attorneys' fees, of such third party action. The insurer may elect not to participate in the cost of the third party action, but as such election is made the insurer shall be deemed to have waived fifty percent (50%) of its subrogation rights granted by the section. Provided, however, that if an employee refuses or fails to institute such action within one (1) year from the date of injury, the employer or insurer may institute such third party action in his name and for his benefit or that of his personal representative. If the employee or his personal representative institutes such third party action, he shall be entitled to at least one third (1/3) of the amount recovered by judgment or compromise settlement less his proportionate share of the reasonable costs, including attorneys' fees, in the event the amount of recovery is insufficient to provide him with~~

~~that amount after payment of subrogation. In the event the employer or insurer institutes such third party action, he shall pay to the employee any amount recovered by judgment or settlement which is in excess of the amounts paid or to be paid under this act an employer's or insurer's reasonable costs and attorneys' fees. Nothing contained in this section shall prevent the employer or insurer, including the division of workmen's compensation, from entering into compromise agreements in settlement of subrogation rights. If death results from the injury or occupational disease, the employer shall have a right of action against the third party for recovery of any amount paid under this act, and such right of action shall be in addition to any cause of action by the heirs or personal representative of the deceased. In the event that the amount of compensation and benefits payable under this act shall not have been fully determined at the time such employee or his heirs or personal representative, or the employer or insurer, shall receive settlement of his action, prosecuted as aforesaid, then the division shall determine what proportion of such settlement shall be allocated under subrogation and such determination may be appealed as any other determination of the division."~~

Section 3. There is a new R.C.M. section numbered 92-204.2 that reads as follows:

92-204.2. Subrogation. (1) If an action is prosecuted as provided for in 92-204.1 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2)(a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost o the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to

institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge.

Section 4. There is a new R.C.M. section numbered 92-212 that reads as follows:

92-212. Uninsured employers fund. (1) There is created an uninsured employers fund. The purpose of the fund is to

pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3. For the purposes of this section, the words "uninsured employer" mean an employer who has not properly complied with the provisions of 92.202.1. The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) The fund shall be funded in the following manner:

(a) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $500, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment prior to July 1, 1977, may not be made.

(b) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid FROM THE FUND to an injured employee of the uninsured employer.

(c) In no event may an uninsured employer's combined liability under subsections (2)(a) and (2)(b) of this

section exceed $30,000.

(d) The division may, at the beginning of each fiscal year, determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 92-709.1(13)(a) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

~~(e) The fund shall also be funded from the state general fund for payment of benefits as provided for in this section. However, any amounts collected under subsections (2)(a), (2)(b), or (2)(d) of this section shall be expended before any general fund appropriations are expended.~~

(3) If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (2)(a) and (2)(b) above, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under this section.

(4) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.

(5) All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

(6) When the division discovers an uninsured employer

it shall order him to cease operations until he has elected to be bound by a compensation plan. An employer who does not comply with the division's order to cease operations is guilty of a misdemeanor.

SECTION 5. THERE IS A NEW R.C.M. SECTION NUMBERED 92-213 THAT READS AS FOLLOWS:

92-213. Election of uninsured employee to take under the fund or bring action against employer -- limitation on benefit entitlement under the fund. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 92-212(1), or an employee's beneficiari s in injuries resulting in death, may elect to either receive benefits from the uninsured employers fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(a) employee was negligent unless such negligence was willful;

(b) injury was caused by the negligence of a fellow employee; or

(c) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

(2) Notwithstanding the provisions of 92-212 and 92-614, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions to not entitle claimants to retroactive reimbursements in the future.

Section 6. There is a new R.C.M. section NUMBERED 92-214 that reads as follows:

Effective date of uninsured employers' fund. Except as provided in this section, 92-212 is effective on July 1, 1977. Payouts for benefits may not be made from the

uninsured employers' fund until the fund attains a level of $150,000 or January 1, 1979, whichever occurs first. However, until payouts for benefits from the uninsured employers' fund begin, an uninsured employer, as defined in 92-212(1), is subject to suit by an employee who suffers an injury arising out of and in the course of employment. In any such action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense that the:

(1) employee was negligent unless such negligence was ~~wilful~~ WILLFUL;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonable safe tools or appliances.

Section 7. Section 92-435, R.C.M. 1947, is amended to read as follows:

"92-435. Insurer defined. "Insurer" means ~~any insurance company authorized to transact business in this state insuring any employer under this act and includes industrial insurance account created by this act, known as the "state fund"~~ an employer bound by compensation plan No.

1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in 92-212."

Section 8. Section 92-614, R.C.M. 1947, is amended to read as follows:

"92-614. Who liable for injuries under the ~~different plans of~~ act and in what amounts, -- extraterritorial application and reciprocity. (1) Every ~~employer who shall become bound by and subject to the provisions of compensation plan number one (1), and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two (2), and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be~~ insurer is liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee of an employer it insures who ~~has elected to come under this act, and who shall receive~~ receives an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any.

(2) If a worker employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising

out of and in the course of such employment, the provisions of this act shall apply to such worker as though he were injured within this state.

(3) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them:

(a) if the employer and employee are bound by the provisions of the Workers' Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(4) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workers' Compensation Law of the certifying state.

(5) The division may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating

regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workers' compensation laws of the agreeing states."

Section 9. Repealer. Sections 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, and 92-1102, R.C.M. 1947, are repealed.

-End-

45th LEGISLATIVE SESSION

COMMITTEE ON FINANCE AND CLAIMS

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE	Without Recommend
50	1/27/77	2/5	2/5/77		2/5/77					
71	1/28/77	2/19,3/5-7	3/7/77			3/7/77				
72	1/25/77	2/19,3/4	3/4/77			3/4/77				
93	1/13/77	2/5	2/5/77	2/5/77						
142	2/15/77	2/21,3/4	3/4/77							3/4
154	2/5/77	2/19,3/4	3/4/77		3/4/77					
166	1/28/77	2/21,3/7-8-								
188	2/14/77	2/21,3/4	3/4/77			3/4/77				
217	2/8/77	2/21,3/7-8-				HOLD				
236	1/24/77	2/19,3/7-8 3/9-								
239	2/3/77	2/7,3/7-9	3/9/77			3/9/77				
247	2/24/77	3/7-8	3/8/77			3/8/77				
324	2/21/77	3/7-8	3/8/77			3/8/77				
340	1/29/77	2/19,3/7-8								
354	2/17/77	2/21,3/8	3/8/77							3/8/77
385	2/21/77	3/7	3/7/77			3/7/77				
SR 2	1/12/77	transferred	1/17/77							

MONTANA LEGISLATIVE COUNCIL LIBRARY

MINUTES OF THE MEETING
FINANCE AND CLAIMS
MONTANA STATE SENATE

February 21, 1977

The seventh meeting of the Senate Finance and Claims Committee met on the above date in room 331 of the State Capitol. The meeting was called to order by Senator Thiessen, Chairman. Roll call was taken at 8:07 A.M. and the Chairman announced hearing in the following order. 142, 166, 188, 239 and 354. He said the meeting would be called off for Tuesday since a request had been made by the leadership to give first preference to the sub-committees, and that an extension would be given to the Finance bills if it became necessary.

Senator Healy explained Senate Bill 217 by giving the history of silicotics pension to the committee. He said over the years that legislature had raised the pension from the original $30 per month to the present $175 and the widows at ½ of this amount.

Ernie Post, staff representative for AFL-CIO said they were in support of the bill and presented a sheet, exhibit 1, attached.

John Bell, representing himself, spoke on what he considered an unfairness. He said he felt the "wrong" was in the passage of the Occupational Diseases Act itself. He said he had brought 2 people to talk briefly.

Ruby Bastian, Marysville silicotic widow spoke briefly. She said she now receives $87.50 per month and prior to the granting of this amount had received nothing. She said she was widowed in 1971.

Jim Murphy, assistant administrator for the Workman's Compensation said the fiscal impact in '78 would be $358,000, in '79 it would be $280,000 for a total of $560,700, and the effect of this bill were it to be passed on approval would be $67,462 for this fiscal year.

In answer to a question, Norman Grossfield said if silicotics were getting benefits through the Occupational Disease Act they would not get money from the Workman's Compensation.

Senator Aber explained Senate Bill 142. This bill was in regard to the re-allocation of the patrol funds. He said this bill would not generate any more new money, but would redistribute it. He said where the Highway Patrol do not maintain a 24 hour office and the counties or the cities provide the services to man the control centers to moniter and relay messages across the state network there was a need to reimburse the county or city law enforcements.

Colonel Sol, Chief of the Highway Patrol said with the increase in load they either had to maintain an office or give some sort of reimbursement to the person handling the center. He said it might save the State money since if these centers do not receive some reimbursement Missoula might ask for the total of $17,000 for this purpose as county reimbursement. He said the ones who

needed someone to be on call, and where they would not have to have the office open except for the Highway Patrol, were the ones mostly concerned.

Senater Aber said both Dean Zinnicker and Dan Mizner were in favor of this bill.

Gregg McCurdy, League of cities and towns said the increased costs to the cities and counties poses a hardship and would like to reiterate what the others had said.

The question was asked, what of the $120,000 if there is no expense. The answer was that he had not stated no expense, he had stated it would not generate any more money. He said that it would be less money returned to the state since they would retain 20% of the funds collected for fines and forfeitures before the money was sent to the state.

Senator Regan asked if this could cause a problem in coming years--whereby they could come back to the state and demand full funding for these centers. She was assured that this was unlikely because of the limitation.

Senator Healy spoke briefly on Senate Bill 166 and asked Mr. Norman Grossfield, Administrator of the Division of Workmans Compensation to address the bill.

Norman Grossfield said this bill would cover those employees who were injured but were not covered since the employer had let the premiums lapse, or had not been covered. He said the money would be taken from the Workman's Comp funds at the rate of $1,000 per death, and should be actuarially sound in about 18 months. This bill would provide the money to start it sooner, and could be paid back to the general fund if so desired. He said most of the claims were small, a cut hand etc., but they did have 2 large ones this year. One on the Indian Reservation where one person was killed and another disabled for life, the other was also serious. He gave members of the committee copies of suggested amendments to Senate Bill 166, exhibit 2, and a statement regarding funding of the proposed bill, exhibit 3, both attached.

Ernie Post spoke in support of the bill. He said Jim Murry, Executive Vice President of the Montana AFL-CIO and member of the advisory board also approved this bill.

Some discussion was held on the policy of the bill--on the problem of penalizing those who did pay, to pay for the free riders, the possibility of getting these employers to contribute to the fund, etc. Mr. Grossfield said they had trouble collecting from some of these people because of the reluctance of the County Attorney's to cooperate in prosecuting. He said this bill would let the Division, through legal action, to bypass the county attorney in many cases.

Senate Bill 188 was explained by Senator Thomas who said it would save the state money. This bill calls for 18¢ per mile reimbursement to parents rather than the $1.20 it presently costs per student

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

45th LEGISLATIVE SESSION 1977 Date 2/21/77

NAME	PRESENT	ABSENT	EXCUSED
THIESSEN, CH	✓		
HIMSL, V.C.	✓		
STORY	✓		
ETCHART	✓		
KOLSTAD	✓		
LOCKREM	✓		
NELSON	✓		
SMITH	✓		
STEPHENS	✓		
FASBENDER	✓		
BOYLAN	✓		
FLYNN	✓		
MEHRENS	✓		
REGAN	✓		
ROBERTS		✓	
THOMAS	✓		

E+H 2

AMENDMENTS TO SENATE BILL 166

1. Amend page 2, Section 1, line 9.
Following: "Household"
Insert: "and domestic"

2. Amend page 3, Section 2, line 14.
Following: "92-212"
Insert: ", 92-213, and 92-214"

3. Amend page 9, Section 4, line 21.
Following: "be paid"
Insert: "from the fund"

4. Amend page 11, Section 5, line 4.
Following: line 4
Insert: "Section 5. There is a new R.C.M. section numbered 92-213 that reads as follows:

92-213. Election of uninsured employee to take under the fund or bring action against employer -- limitation on benefit entitlement under the fund. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 92-212(1), or an employee's beneficiaries in injuries resulting in death, may elect to either receive benefits from the uninsured employers fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(a) employee was negligent unless such negligence was willful;

(b) injury was caused by the negligence of a fellow employee; or

(c) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

(2) Notwithstanding the provisions of 92-212 and 92-614, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."
Renumber: all subsequent sections.

5. Amend page 11, Section 5, line 4.
Following: "section"
Insert: "numbered 92-214"

6. Amend page 11, Section 5, line 19.
Strike: "wilful"
Insert: "willful"

28

MEMORANDUM REGARDING FUNDING OF THE PROPOSED
UNINSURED EMPLOYERS FUND
(SENATE BILL NO. 166)

The proposed bill to create an uninsured employers fund would provide a system that would grant to employees workers' compensation benefits even though their employers had not properly been insured. A separate memorandum explains in detail the provisions of the bill. The following explanation is submitted regarding the proposed funding system to be used.

The fund would be funded through four sources. The first source would be through a penalty assessed against uninsured employers. This penalty would amount to double the amount the employer would have paid in premiums for the three preceding years while the employer had uninsured employees, or $500, whichever is greater. This penalty system would replace the present criminal penalty which carries a fine of up to $600 or imprisonment up to six months. Second, the fund would be reimbursed by uninsured employers for the amount paid out of the fund to an injured employee of an uninsured employer. Thus, if the uninsured employers fund had to pay $2,000 to an injured employee for compensation and medical benefits, the fund would seek reimbursement for the $2,000 from the uninsured employer. The bill proposes to put a maximum limitation on an uninsured employer's liability of $30,000. Third, the fund would be granted $1,000 assessments for each industrial death. Presently, there is a $1,000 assessment for each death case in Montana involving an industrial injury. The assessment amount now goes to the subsequent injury fund. The subsequent injury fund law was passed in 1973 and assessments have been granted to this fund through the $1,000 assessment system and also through an additional assessment that is charged against insurers under all three compensation plans. The subsequent injury fund establishes a system whereby individuals with severe handicaps can become eligible for employment, because the fund limits an employer's liability for workers' compensation payments should the worker be reinjured. As of December 31, 1976, the fund balance for the subsequent injury fund was about 1.3 million dollars. Based on its experience to date, the Division considers that the subsequent injury fund has now been built up to a point whereby adequate reserves can be established to pay current liabilities and liabilities incurred in the near future. Thus, the $1,000 assessment could be transferred from the subsequent injury fund to the newly created uninsured employers fund without jeopardizing the solvency of the subsequent injury fund. There are approximately fifty industrial deaths per year in the State of Montana. Thus, if this unfortunate record continues, the fund would receive approximately $50,000 per year through the $1,000 death assessment system. In a one and one-half year period, the assessment would amount to approximately $75,000.

Fourth, during a meeting with the Senate Laobr and Employment Relations Committee, it was suggested that the fund also receive a general fund appropriation of $150,000. This would permit an earlier effective date for benefit payments, such as July 1, 1977, rather than January 1, 1979.

Under an insurance system, insurers must recognize potential liabilities and set aside dollar amounts in reserve accounts in order to provide for estimated liabilities. The Division believes that there should be an attempt to operate the uninsured employers fund on a sound financial basis by establishing proper reserves for liabilities as such liabilities occur. This will avoid the possibility of insolvency of the fund in future years.

SENATE Labor & Emp COMMITTEE

BILL _____ VISITORS' REGISTER DATE 2-21

NAME	REPRESENTING	BILL #	(check one) SUPPORT	OPPOSE
Joe R Sol	Hiway Patrol	142	✓	
Ruby Bastain				
Ernest Sost	Mt State AFL-CIO	166 217	✓	
James J Murphy	Division of Workers Comp.	166 217	✓	
Bernard H Goetzinger	Division of Workers Comp	166	✓	
Gary Fritzen	Dept of Agric.	239	✓	
E R Fastabend	Dept of Agric	239	✓	
Gregg L. McGrath	Assn. of Counties	142	✓	
Sen Lee	Self	166		
Magdalena Bennett				
Bill Drake	League of Cities & Towns	142	✓	
Bill Drake	American Insurance Assn	166	✓	
Tom Schneider	MPEA	354	✓	

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

MINUTES OF THE MEETING
FINANCE AND CLAIMS
MONTANA STATE SENATE

March 8, 1977

The tenth meeting of the Senate Finance and Claims Committee met in room 331 of the State Capitol on the above date. The meeting was called to order by Senator Thiessen, Chairman, roll call was taken, time was 4:08 P. M.

Senator Himsl said he thought the committee ought to consider something before we get into an embarrassing situation-- if we work piece meal or do we get an over-all look at the bills. He felt 3 things should be taken into consideration.
1. Can we find out if the Governor's tax refund package is going to be adopted.

2. Some understanding of what the pay increase is going to be.

3. The school foundation program. Are we going to fully fund the 80% level, or use it to balance the budget? This would bring higher taxes back to the local levels.

Senator Thiessen said he had no information on this as yet, and Representative Bardanouve seemed to be "sitting" on the bills. Senator Himsl said he understood some of the bills had been acted on but were being held in committee.

Senator Himsl explained that in spending in all these small areas we could find ourselves extremely short when it came to funding the big bills. He said we should have the big items first and then make the decisions on the small bills with what was left.

Senator Lockrem said every sub-committee had the same problem in not knowing what the pay plan would do to their budget, but it could mean a $12 million recurring thing. He said he understood the sub-committee had not come out with its recommendations as yet.

Senator Thiessen gave an oral list of the bills still in committee.

Senate Bill 354 was discussed. Motion by Senator Regan that Senate Bill 354 do pass, second by Senator Mehrens, tie vote, and bill will go out of committee without recommendation.

Senate Bill 166 was discussed with a motion by Senator Lockrem, second by Senator Nelson that Senate Bill 166 do not pass. Discussion on this bill included an explanation by Senator Himsl since he had heard the testimony in Labor Committee. Discussion was heard in regard to the amendments presented by the Workman's Compensation head, as to whether this bill came under the heading of essential or desirable, in regard to priority.

Discussion on the employer who paid his fees being charged through the legislation for the employer who did not do so. The Committee decided to pass consideration of the bill until the nest meeting.

Senate Bill 247 was discussed. Motion by Senator Mehrens, second by Senator Boylan to amend the title by re-instating the Committee of the whole amendment, and page 3 line 22 as on the Committee of the whole amendment. Voted and passed.

Senate Bill 247 to be passed as amended, motion by Senator Story, second by Senator Boylan. Voted and passed.

Senate Bill 324 was discussed. A copy of the proposed amend= ments was given to the committee members, and Mr. Shannahan said it could be done simpler, that the first copy had been prepared in a hurry. Copy attached as exhibit 2.

Motion by Senator Roberts to reinstate the language on page 7 (first amendment attached), second by Senator Mehrens, Boted and passed.

Motion by Senator Roberts, second b y Senator Mehrens that Senate Bill 324 as amended, do pass. Voted and passed.

Senate Bill 236 was discussed, and the committee decided to do some checking and hold it over until the next day.

Senate Bill 217 was discussed. Senator Himsl said this fis- cal note was based on the House Bill. A motion by Senator Thomas to reinstate the striken language and changing the 1/2 to 3/4 was voted and passed.

Motion by Senator Thomas, second by Senator Mehrens to amend the title by removing "all" on line 7 and substituting "eligible", voted and passed.

Motion by Senator Stephens, second by Senator Kolstad that Senate Bill 217 do pass as amended.

Motion to include deleting the effective date, Voted and passed, accepted with unanimous vote, motion by Senator Regan, second by Senator Lockrem.

Motion by Senator Stephens, second by Senator Kolstad that Senate Bill 217 as amended, do pass. Voted and passed.

General agreement of the committee on a verbal basis was to hold Senate Bill 217 in committee until more could be learned about the big spending bills to come out of appropriations.

The meeting adjourned.

SENATOR THIESSEN, Chairman

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

45th LEGISLATIVE SESSION 1977 Date 3-8-77

NAME	PRESENT	ABSENT	EXCUSED
THIESSEN, CH	✓		
HIMSL, V.C.	✓		
STORY	✓		
ETCHART	✓		
KOLSTAD	✓		
LOCKREM	✓		
NELSON	✓		
SMITH	✓		
STEPHENS	✓		
FASBENDER	ab		
BOYLAN	✓		
FLYNN	✓		
MEHRENS	✓		
REGAN	✓		
ROBERTS	✓		
THOMAS	✓		

MINUTES OF THE MEETING
FINANCE AND CLAIMS
MONTANA STATE CAPITOL

March 9, 1977

The eleventh meeting of the Senate Finance and Claims met on the above date in room 331 of the State Capitol. The meeting was called to order by Senator Thiessen, Chairman at 4:11 P.M. Roll call was taken.

Senate Bill 239 was discussed. The amendments prepared by the fiscal analyst and headed "proposed amendments" was compared to those suggested by a lawyer on the Legislative Council and enclosed as "alternative proposed amendment", were read and compared.

Motion by Senator Boylan, second by Senator Regan to accept the "proposed amendments", voted and passed.

Motion by Senator Boylan, second by Senator Thomas that Senate Bill 239 pass as amended. Voted and passed.

Senate Bill 236 was discussed. Mr. Mizner spoke on the merits of the bill at length. He said it is a League Bill, He said this would be an increase, money not as yet tapped, and felt it should be used in the cities and towns. He said the Federal had increased the mineral royalties and this was the extra money. He said they do not want to disturb any of the money coming in at the present time for schools, etc., only this new money.

Mr. Gregg McCurdy spoke for the Counties. He said they were not in agreement with Mr. Mizner, that an agreement had been drawn up between the counties and the cities, but that the city apparently had no qualms about breaking it. He said that when the Federal Government increased the royalties, they also cut the percentage of money coming to the counties as "in lieu of" taxes. He said these cuts do not apply to the cities since they do not have BLM land etc., within their borders. He said this bill was not constructive, and that the "in lieu of" payments were used for all the residents of the county, regardless of whether they lived in the city or the rural areas. He said the reason Congress is cutting back these funds is that they feel the states are going to re-distribute the royalty funds and then be back for more money from the Federal Government.

Questions were asked, and various answers resulted as to the size of the funding, the percentages, the change in the total funding and the percentages of this in comparison with the original funding. It was felt that an amendment on page 1, section 1, lines 12 and 13 to strike on line 12 the words "additional coal lease funds. The additional 12 1/2%" and to insert the words "A total of 25%" would help to clarify the language of the bill and make it more readable.

Other proposed amendments would strike the words on page 1 line 16 "of the additional money", and line 23 to strike the words "The remaining" and "of the additional money".

Questions were asked about restrictions, and Mizner said it is specifically for capital construction and for cities and towns in impacted areas. He answered another question to the effect that yes, when Congress raised this amount it was under concern for the impacted areas. He was asked if he had the hearing reports, and answered yes, that he can furnish the reports. In answer to a question from Senator Thiessen, Gregg McCurdy said the counties would lose 3½ million per year under the bill. In a question from Senator Lockrem, McCurdy answered that this in lieu of taxes money does affect the counties in that it is taken out of the "in lieu of" monies from other lands.

A request was made of John LaFavor to put down on paper exactly what this would do to the cities and counties by the passing of this bill. John said he would try.

Senate Bill 166 was discussed very briefly, since they did not have the information as yet, it was agreed that they would work on this bill tomarrow.

The meeting adjourned.

SENATOR THIESSEN, Chairman

AMENDMENTS TO SENATE BILL 166

1. Amend page 2, Section 1, line 9.
Following: "Household"
Insert: "and domestic"

2. Amend page 3, Section 2, line 14.
Following: "92-212"
Insert: ", 92-213, and 92-214"

3. Amend page 9, Section 4, line 21.
Following: "be paid"
Insert: "from the fund"

4. Amend page 11, Section 5, line 4.
Following: line 4
Insert: "Section 5. There is a new R.C.M. section numbered 92-213 that reads as follows:

92-213. Election of uninsured employee to take under the fund or bring action against employer -- limitation on benefit entitlement under the fund. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 92-212(1), or an employee's beneficiaries in injuries resulting in death, may elect to either receive benefits from the uninsured employers fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(a) employee was negligent unless such negligence was willful;

(b) injury was caused by the negligence of a fellow employee; or

(c) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

(2) Notwithstanding the provisions of 92-212 and 92-614, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."
Renumber: all subsequent sections.

5. Amend page 11, Section 5, line 4.
Following: "section"
Insert: "numbered 92-214"

6. Amend page 11, Section 5, line 19.
Strike: "wilful"
Insert: "willful"

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

45th LEGISLATIVE SESSION 1977 Date 3-9-77

NAME	PRESENT	ABSENT	EXCUSED
THIESSEN, CH	✓		
HIMSL, V.C.	✓		
STORY	ab		
ETCHART	✓		
KOLSTAD	✓		
LOCKREM	✓		
NELSON	✓		
SMITH	✓		
STEPHENS	✓		
FASBENDER	✓		
BOYLAN	✓		
FLYNN	✓		
MEHRENS	ab		
REGAN	✓		
ROBERTS	✓		
THOMAS	✓		

MINUTES OF THE MEETING
FINANCE AND CLAIMS
MONTANA STATE SENATE

April 1, 1977

The twentieth meeting of the Senate Finance and Claims Committee met in room 331 on the above date. Roll call was taken and the meeting was called to order at 11:16 A.M.

A motion was made by Senator Regan, second by Senator Flynn to reconsider Senate Bill 217. Voted and passed, unanimous.

Motion by Senator Regan, second by Senator Nelson that Senate Bill 217 do not pass. Voted, passed, unanimous.

Senator Regan said that after reading the auditor's report she felt it might be wise to take another look at the big bill to see what the extent might be. Perhaps they could set some guidelines down for another year. Senator Roberts said he felt it would have to have a change in the substantive provision in the law, that it effects the basic act.

House Bill 283 and 284 were discussed. This bill had been voted on before and the committee had been asked to hold the bill for a couple of days. The Chairman received permission from the committee to put it out.

Senate Bill 236 was recommended do not pass, motion by Senator Fasbender, second by Senator Roberts. Voted, passed.

Senate Bill 166 was discussed with amendments for page 11, line 10; page 10, line 6, and page 9, line 9. Discussion was held and they asked the fiscal analyst, Judy Rippingale to give her report on it. Several committee members had problems with the bill in that it penalized the employer who paid to pay in addition for the one who did not. This bill is based on the death fund of $1,000 per death, and the deaths average around 50 per year.

Motion by Senator Regan to strike lines 6 through 10. Voted and passed. The motion had been seconded by Senator Kolstad.

Senator Himsl made a motion, seconded by Senator Regan to move the amendments offered by the Workman's Compensation Division to make the bill workable. Copy attached voted and passed.

Motion by Senator Regan, second by Senator Flynn that Senate Bill 166 do pass as amended. Roll call vote attached, motion passed.

The meeting was adjourned.

SENATOR THIESSEN, Chairman

☐ DO PASS
☐ DO NOT PASS
☐ BE CONCURRED IN
☐ BE NOT CONCURRED IN
☐ BE ADOPTED
☐ BE NOT ADOPTED
☐ BE HELD OVER

STANDING COMMITTEE REPORT

BEST COPY AVAILABLE

April 1 19 77

MR. PRESIDENT

We, your committee on FINANCE AND CLAIMS

having had under consideration SENATE Bill No. 166

Respectfully report as follows: That SENATE Bill No. 166

introduced bill, be amended as follows:

1. Amend page 3, section 1, line 9.
Following: "household"
Insert: "and domestic"

2. Amend page 3, section 2, line 14.
Following: "92-212"
Insert: ", 92-213, and 92-214"

3. Amend page 3, section 4, line 21.
Following: "be paid"
Insert: "from the fund"

4. Amend page 11, section 4, lines 6 through 10.
Following: line 5
Strike: lines 6 through 10 in their entirety

DO PASS

SENATOR METCALF Chairman.

BEST COPY AVAILABLE

5. Amend page 11, section 4, following line 3.
Following: line 3
Insert: "Section 5. There is a new R.C.M. section numbered 92-213 that reads as follows:

92-213. Election of uninsured employee to take under the fund or bring action against employer -- limitation on benefit entitlement under the fund. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 92-212 (1), or an employee's beneficiaries in injuries resulting in death, may elect to either receive benefits from the uninsured employers fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(a) employee was negligent unless such negligence was willful;

(b) injury was caused by the negligence of a fellow employee; or

(c) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

(2) Notwithstanding the provisions of 92-212 and 92-614, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."
Renumber: all subsequent sections.

6. Amend page 11, Section 5, line 4.
Following: "section"
Insert: "numbered 92-214"

7. Amend page 11, section 5, line 10.
Strike: "wilful"
Insert: "willful"

AND AS SO AMENDED, DO PASS

92.

SENATOR THIESSEN, Chairman

40

SB 166

AMENDMENTS TO SENATE BILL 166

1. Amend page 2, Section 1, line 9.
Following: "Household"
Insert: "and domestic"

2. Amend page 3, Section 2, line 14.
Following: "92-212"
Insert: ", 92-213, and 92-214"

3. Amend page 9, Section 4, line 21.
Following: "be paid"
Insert: "from the fund"

4 5. Page 10 Amend page 11, ~~Section 5~~, line 3.
Following: line 4
Insert: "Section 5. There is a new R.C.M. section numbered 92-213 that reads as follows:

92-213. Election of uninsured employee to take under the fund or bring action against employer -- limitation on benefit entitlement under the fund. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 92-212(1), or an employee's beneficiaries in injuries resulting in death, may elect to either receive benefits from the uninsured employers fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(a) employee was negligent unless such negligence was willful;

(b) injury was caused by the negligence of a fellow employee; or

(c) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

(2) Notwithstanding the provisions of 92-212 and 92-614, injured employees or an employee's beneficiaries who elect to receive benefits from the uninsured employers fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions do not entitle claimants to retroactive reimbursements in the future."
Renumber: all subsequent sections.

6. Amend page 11, Section 5, line 4.
Following: "section"
Insert: "numbered 92-214"

7. Amend page 11, Section 5, line 19.
Strike: "wilful"
Insert: "willful"

SENATE COMMITTEE FINANCE AND CLAIMS

Date 4-1-77 2 Bill No. 164 Time 11:48

NAME	YES	NO
Himsl, V.C.	✓	
Story		✓
Etchart		✓
Kolstad		✓
Lockrem	ef	
Nelson		✓
Smith		✓
Stephens		✓
Fasbender	✓	
Boylan	ab	
Flynn	✓	
Mehrens	ab	
Regan	✓	
Roberts	✓	
Thomas	✓	
Thiessen, Chairman	✓	

Secretary Chairman

Motion: 16 9 ✓

11:01

ROLL CALL

FINANCE AND CLAIMS COMMITTEE

45th LEGISLATIVE SESSION 1977 Date 4-1-77

NAME	PRESENT	ABSENT	EXCUSED
THIESSEN, CH	✓		
HIMSL, V.C.	✓		
STORY	✓		
ETCHART	✓		
KOLSTAD	✓		
LOCKREM			✓
NELSON	✓		
SMITH	✓		
STEPHENS	✓		
FASBENDER	✓		
BOYLAN			
FLYNN	✓		
MEHRENS			
REGAN	✓		
ROBERTS	✓		
THOMAS	✓		

MINUTES OF MEETING

HOUSE RULES COMMITTEE

MONTANA STATE LEGISLATURE

April 12, 1977

The meeting of the House Rules Committee was called to order by Rep. Meloy, Chairman, on the above date in Room 343 at 12:10 P.M.

Members of the committee present were:

Rep. Bardanouve	Rep. Fagg	Rep. Meloy
Rep. Bradley	Rep. Kvaalen	Rep. Moore
Rep. Driscoll	Rep. Marks	

Representative Brand was absent.

Representative Gerke attended at 12:30 P.M. and Representative Scully at 12:45 P.M.

House Joint Resolution 104 was before the committee for consideration.

Rep. Fagg, the sponsor of the bill, explained that House Bill 796, which had been tabled in the Rules Committee, set up an interim study committee. HJR 104 simply requests that the concept contained in HB 796 be studied in the interim. He hoped that the Joint Rules Committee could put this bill and HJR 85 together. The purpose would be to study what could be done in the interim.

Rep. Moore stated that he had suggested that HJR 85 be put in the legislative finance committee.

Rep. Meloy said that previously there has been an interim Joint Rules Committee which discussed changes in the rules. This could possibly be put in that committee.

Rep. Driscoll said he had talked with some people from the Legislative Leaders' Foundation and had asked them if they could come up to Montana and assist with this type of thing.

Rep. Fagg moved that HJR 104 do pass.

A vote was taken and the motion carried unanimously.

Senate Bill 166 had been referred to the Rules Committee because it was sent to the House after the transmittal deadline.

Rep. Meloy explained that the rules would have to be suspended to accept the bill.

Rep. Bradley moved that Senate Bill 166 be accepted.

Rep. Moore made a substitute motion that Senate Bill 166 not be accepted.

Rep. Driscoll asked why it was in the Rules Committee.

Rep. Meloy answered that it was transmitted past the deadline.

Rep. Moore thought it should be put in the appropriate standing committee.

Rep. Driscoll asked if any previous late bills had been put in standing committees.

Rep. Meloy explained that only one had, and the rules had been suspended for that.

Rep. Moore asked why the bill was getting to the House so late.

Rep. Meloy answered that the bill had been taken from printing and referred to the Finance and Claims Committee because it had a fiscal impact. He felt it should be put on the floor for a vote, that it had been transmitted past the deadline because of being put in Finance and Claims.

Rep. Moore withdrew his motion.

A vote was taken on Rep. Bradley's motion. It carried unanimously.

Senate Bill 447 had been referred to the Rules Committee because it was transmitted after the deadline.

Rep. Meloy said that this was not an appropriation bill, but was similar to the annual session bills.

Rep. Driscoll moved that Senate Bill 447 not be accepted.

A vote was taken. Voting aye were Representatives Bardanouve, Driscoll, Fagg, Kvaalen, Meloy, and Moore. Voting nay were Representatives Bradley and Marks. The motion carried.

Rep. Bardanouve asked if the Senate had been accepting the House's bills.

Rep. Meloy replied yes, generally. He mentioned that they had refused to accept two of the House's bills.

A brief discussion was then had on the contents of Senate Bill 447.

Rep. Bradley said she thought they were out of order to discuss the merits of the bill.

SENATE BILL NO. 166

INTRODUCED BY LABOR AND EMPLOYMENT RELATIONS COMMITTEE

LEE, CHAIRMAN

BY REQUEST OF THE DIVISION OF WORKERS' COMPENSATION

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS 92-202.1, 92-204.1, 92-435, AND 92-614, R.C.M. 1947; CREATING AN UNINSURED EMPLOYERS' FUND TO GRANT TO ALL EMPLOYEES IN THIS STATE WORKERS' COMPENSATION BENEFITS EVEN IF THEIR EMPLOYERS ARE NOT PROPERLY INSURED; PROVIDING FOR FUNDING OF THE FUND; DEFINING INSURER; AND REPEALING SECTIONS 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, AND 92-1102, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 92-202.1, R.C.M. 1947, is amended to read as follows:

"92-202.1. Employments covered and employments exempted from coverage. ~~this act shall not apply to any of the following employments unless the employer elects coverage under this act:~~ (1) Except as provided in subsection (2) of this section, the Workers' Compensation Act applies to all employers as defined in 92-410.1 and to all employees as defined in 92-411. An employer who has any employee in service under any appointment or contract of hire, expressed or implied, oral or written, shall elect to be bound by the provisions of compensation plan No. 1, 2, or 3. Every employee whose employer is bound by the Workers' Compensation Act is subject to and bound by the compensation plan that has been elected by the employer.

(2) Unless the employer elects coverage for these employments under the act and an insurer allows such an election, the Workers' Compensation Act does not apply to any of the following employments:

~~(1)~~(a) Household AND DOMESTIC employment.

~~(2)~~(b) Casual employment as defined in 92-436.

~~(3)~~(c) Employment of members of an employer's family dwelling in ~~his~~ the employer's household.

~~(4)~~(d) Employment of sole proprietors or working members of a partnership.

~~(5)~~(e) Employment for which a rule of liability for injury, occupational disease, or death is provided under the laws of the United States.

~~(6)~~(f) Any person performing services in return for aid or sustenance only."

Section 2. Section 92-204.1, R.C.M. 1947, is amended to read as follows:

"92-204.1. Election of employer and employee to come under act -- action against third party causing injury -- ~~right to subrogation. Where both the employer and employee~~

REFERENCE BILL

~~have--elected-to-come~~ For all employments covered under ~~this~~ the ~~act~~ Workers' Compensation Act, or for which an election has been made for coverage under the act, the provisions of ~~this~~ the act ~~shall be~~ are exclusive, ~~and--such--election shall--be--held--to--be-a-surrender-by-such-employer-and-the servants,-and-employees-of-such-employer-and-such--employee, as--among--themselves,--of--their-right-to-any-other-method, form-or-kind-of-compensation,-or-determination--thereof,--or to-any-other-compensation,-or-kind-of-determination-thereof, or--cause--of-action-at-law,-suit-in-equity,-or-statutory-or common-law-right-or-remedy,-or-proceeding-whatever,--for--or on--account--of--any--personal--injury--to--or-death-of-such employee,--except--as--such--rights---may---be---hereinafter specifically-granted;-and-such-election-shall-bind~~ Except as provided in 92-212, 92-213, AND 92-214 for uninsured employers and except as otherwise provided in the Workers' Compensation Act, an employer is not subject to any liability whatever for the death or personal injury to any employees covered by the Workers' Compensation Act. The Workers' Compensation Act binds the employee himself, and in case of death ~~shall bind~~ binds his personal representative, and all persons having any right or claim to compensation for his injury or death, as well as the employer, and the servants and employees of such employer, and those conducting his business during liquidation, bankruptcy or

insolvency. The right to compensation and medical benefits as provided by this act ~~shall~~ is not be affected by the fact that the injury, occupational disease, or death is caused by the negligence of a third party other than the employer, or the servants or employees of the employer. Whenever such event ~~shall occur~~ occurs to an employee while performing the duties of his employment and such event ~~shall be~~ is caused by the act or omission of some persons or corporations other than his employer, or the servants or employees of his employer, ~~then such~~ the employee, or in case of his death his heirs or personal representative shall, in addition to the right to receive compensation under this act, have a right to prosecute any cause of action he may have for damages against such persons or corporations. ~~Further provided,--that--whenever-such~~ However, if an employee ~~shall receive~~ receives an injury while performing the duties of his employment and ~~such~~ the injury or injuries, so received by ~~such~~ the employee, are caused by the intentional and malicious act or omission of a servant or employee of his employer, then ~~such~~ the employee, or in case of his death, his heirs or personal representatives, shall, in addition to the right to receive compensation under the ~~workmen's~~ Workers' Compensation Act, have a right to prosecute any cause of action he may have for damages against ~~such~~ the servants or employees of his employer, causing ~~such~~ the

injury. Provided, that the employer or insurer shall be entitled to full subrogation for all compensation and benefits paid or to be paid under this act, except as otherwise provided in this section. The employer's or insurer's right of subrogation shall be a first lien on such claim, judgment or recovery. The employee shall institute such third-party action after giving the employer or insurer reasonable notice of his intention to institute such third party action. The employee may request that such insurer pay a proportionate share of the reasonable costs, including attorneys' fees, of such third-party action. The insurer may elect not to participate in the cost of the third party action, but as such election is made the insurer shall be deemed to have waived fifty percent (50%) of its subrogation rights granted by the section. Provided, however, that if an employee refuses or fails to institute such action within one (1) year from the date of injury, the employer or insurer may institute such third-party action in his name and for his benefit or that of his personal representative. If the employee or his personal representative institutes such third party action, he shall be entitled to at least one-third (1/3) of the amount recovered by judgment or compromise settlement less his proportionate share of the reasonable costs, including attorneys' fees, in the event the amount of recovery is insufficient to provide him with

that amount after payment of subrogation. In the event the employer or insurer institutes such third-party action, he shall pay to the employee any amount recovered by judgment or settlement which is in excess of the amounts paid or to be paid under this act an employer's or insurer's reasonable costs and attorneys' fees. Nothing contained in this section shall prevent the employer or insurer, including the division of workmen's compensation, from entering into compromise agreements in settlement of subrogation rights. If death results from the injury or occupational disease, the employer shall have a right of action against the third party for recovery of any amount paid under this act, and such right of action shall be in addition to any cause of action by the heirs or personal representative of the deceased. In the event that the amount of compensation and benefits payable under this act shall not have been fully determined at the time such employee or his heirs or personal representative, or the employer or insurer, shall receive settlement of his action, prosecuted as aforesaid, then the division shall determine what proportion of such settlement shall be allocated under subrogation and such determination may be appealed as any other determination of the division."

Section 3. There is a new R.C.M. section numbered 92-204.2 that reads as follows:

92-204.2. Subrogation. (1) If an action is prosecuted as provided for in 92-204.1 and except as otherwise provided in this section, the insurer is entitled to subrogation for all compensation and benefits paid or to be paid under the Workers' Compensation Act. The insurer's right of subrogation is a first lien on the claim, judgment, or recovery.

(2)(a) If the injured employee intends to institute the third party action, he shall give the insurer reasonable notice of his intention to institute the action.

(b) The injured employee may request that the insurer pay a proportionate share of the reasonable cost of the action, including attorneys' fees.

(c) The insurer may elect not to participate in the cost of the action. If this election is made, the insurer waives 50% of its subrogation rights granted by this section.

(d) If the injured employee or the employee's personal representative institutes the action, the employee is entitled to at least one-third of the amount recovered by judgment or settlement less a proportionate share of reasonable costs, including attorneys' fees, if the amount of recovery is insufficient to provide the employee with that amount after payment of subrogation.

(3) If an injured employee refuses or fails to

institute the third party action within 1 year from the date of injury, the insurer may institute the action in the name of the employee and for the employee's benefit or that of the employee's personal representative. If the insurer institutes the action, it shall pay to the employee any amount received by judgment or settlement which is in excess of the amounts paid or to be paid under the Workers' Compensation Act after the insurer's reasonable costs, including attorneys' fees for prosecuting the action, have been deducted from the recovery.

(4) An insurer may enter into compromise agreements in settlement of subrogation rights.

(5) If the amount of compensation and other benefits payable under the Workers' Compensation Act have not been fully determined at the time the employee, the employee's heirs or personal representatives, or the insurer have settled in any manner the action as provided for in this section, the division shall determine what proportion of the settlement shall be allocated under subrogation. The division's determination may be appealed to the workers' compensation judge.

Section 4. There is a new R.C.M. section numbered 92-212 that reads as follows:

92-212. Uninsured employers fund. (1) There is created an uninsured employers fund. The purpose of the fund is to

pay to an injured employee of an uninsured employer the same benefits the employee would have received if the employer had been properly enrolled under compensation plan No. 1, 2, or 3. For the purposes of this section, the words "uninsured employer" mean an employer who has not properly complied with the provisions of 92-202-1. The division shall administer the fund and shall pay all proper benefits to injured employees of uninsured employers.

(2) The fund shall be funded in the following manner:

(a) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or $500, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment prior to July 1, 1977, may not be made.

(b) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid FROM THE FUND to an injured employee of the uninsured employer.

(c) In no event may an uninsured employer's combined liability under subsections (2)(a) and (2)(b) of this

section exceed $30,000.

(d) The division may, at the beginning of each fiscal year, determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 92-709-1(13)(a) shall be paid to the uninsured employers' fund rather than the subsequent injury fund.

~~(e) The fund shall also be funded from the state general fund for payment of benefits as provided for in this section. However, any amounts collected under subsections (2)(a), (2)(b), or (2)(d) of this section shall be expended before any general fund appropriations are expended.~~

(3) If, upon demand of the division, an uninsured employer refuses to make the payments to the fund that are provided for in subsections (2)(a) and (2)(b) above, the sums may be collected by the division through suit. The division may settle through compromise with an uninsured employer the amount due the fund under this section.

(4) Proper surpluses and reserves shall be kept for the fund. The board of investments shall invest the moneys of the fund. The cost of administration of the fund shall be paid out of the money in the fund.

(5) All appropriate provisions in the Workers' Compensation Act apply to the fund in the same manner as they apply to compensation plans No. 1, 2, and 3.

(6) When the division discovers an uninsured employer

52

it shall order him to cease operations until he has elected to be bound by a compensation plan. An employer who does not comply with the division's order to cease operations is guilty of a misdemeanor.

SECTION 5. THERE IS A NEW R.C.M. SECTION NUMBERED 92-213 THAT READS AS FOLLOWS:

92-213. Election of uninsured employee to take under the fund or bring action against employer -- limitation on benefit entitlement under the fund. (1) An employee who suffers an injury arising out of and in the course of employment while working for an uninsured employer as defined in 92-212(1), or an employee's beneficiaries in injuries resulting in death, may elect to either receive benefits from the uninsured employers fund or pursue a damage action against the employer. However, once an election has been made to either take from the fund or pursue a damage action, the election is final and binding on the employee or the employee's beneficiaries, heirs, and personal representatives. An injured employee or the employee's beneficiaries may not receive both benefits from the fund and pursue a damage action. If an injured employee or the employee's beneficiaries elect to bring an action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense for the employer that the:

(a) employee was negligent unless such negligence was willful;

(b) injury was caused by the negligence of a fellow employee; or

(c) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonably safe tools or appliances.

(2) Notwithstanding the provisions of 92-212 and 92-614, injured employees or an employee's beneficieries who elect to receive benefits from the uninsured employers fund are not granted an entitlement by this state for full workers' compensation benefits from the fund. Benefits from the fund shall be paid in accordance with the sums in the fund. If the division determines at any time that the sums in the fund are not adequate to fully pay all claims, the division may make appropriate proportionate reductions in benefits to all claimants. The reductions to not entitle claimants to retroactive reimbursements in the future.

Section 6. There is a new R.C.M. section NUMBERED 92-214 that reads as follows:

Effective date of uninsured employers' fund. Except as provided in this section, 92-212 is effective on July 1, 1977. Payouts for benefits may not be made from the

uninsured employers' fund until the fund attains a level of $150,000 or January 1, 1979, whichever occurs first. However, until payouts for benefits from the uninsured employers' fund begin, an uninsured employer, as defined in 92-212(1), is subject to suit by an employee who suffers an injury arising out of and in the course of employment. In any such action to recover damages for personal injuries sustained or for death resulting from personal injuries so sustained, it is not a defense that the:

(1) employee was negligent unless such negligence was ~~wilful~~ WILLFUL;

(2) injury was caused by the negligence of a fellow employee; or

(3) employee had assumed the risks inherent in, incident to, or arising out of his employment or arising from the failure of the employer to provide and maintain a reasonably safe place to work or reasonable safe tools or appliances.

Section 7. Section 92-435, R.C.M. 1947, is amended to read as follows:

"92-435. Insurer defined. "Insurer" means ~~any insurance company authorized to transact business in this state insuring any employer under this act and includes industrial insurance account created by this act, known as the "state fund"~~ an employer bound by compensation plan No. 1, an insurance company transacting business under compensation plan No. 2, the industrial insurance account under compensation plan No. 3, or the uninsured employers' fund provided for in 92-212."

Section 8. Section 92-614, R.C.M. 1947, is amended to read as follows:

"92-614. Who liable for injuries under the ~~different plans of~~ act and in what amounts, -- extraterritorial application and reciprocity. (1) Every ~~employer who shall become bound by and subject to the provisions of compensation plan number one (1), and every employer and insurer who shall become bound by and subject to the provisions of compensation plan number two (2), and the industrial accident fund where the employer of the injured employee has become bound by and subject to the provisions of compensation plan No. 3, shall be~~ insurer is liable for the payment of compensation in the manner and to the extent hereinafter provided to an employee of an employer it insures who ~~has elected to come under this act, and who shall receive~~ receives an injury arising out of and in the course of his employment, or, in the case of his death from such injury, to his beneficiaries, if any.

(2) If a worker employed in this state who is subject to the provisions of this act temporarily leaves the state incidental to that employment and receives an injury arising

out of and in the course of such employment, the provisions of this act shall apply to such worker as though he were injured within this state.

(3) If a worker from another state and his employer from another state are temporarily engaged in work within this state, this act shall not apply to them:

(a) if the employer and employee are bound by the provisions of the Workers' Compensation Law or similar law of such other state which applies to them while they are in the state of Montana, and

(b) if the Workers' Compensation Act of this state is recognized and given effect as the exclusive remedy for workers employed in this state who are injured while temporarily employed in such other state.

(4) A certificate from an authorized officer of the workers' compensation department or similar agency of another state certifying that an employer of such other state is bound by the Workers' Compensation Act of the state and that its act will be applied to employees of the employer while in the state of Montana shall be prima facie evidence of the application of the Workers' Compensation Law of the certifying state.

(5) The division may, with the approval of the governor, enter into agreements with workers' compensation agencies of other states for the purpose of promulgating

regulations not inconsistent with the provisions of this act to carry out the extraterritorial application of the workers' compensation laws of the agreeing states."

Section 9. Repealer. Sections 92-201, 92-203, 92-205, 92-207.1, 92-209, 92-210, 92-211, and 92-1102, R.C.M. 1947, are repealed.

-End-